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State v. Murphy Appellant's Brief Dckt. 43455

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43455
)	
v.)	LATAH COUNTY NO. CR 2012-1325
)	
MICHAEL KENNETH MURPHY JR.,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Michael Kenneth Murphy, Jr., admitted to violating his probation, the district court revoked probation, executed the underlying five-year sentence for burglary, and retained jurisdiction ("a rider"). About three months later, the district court held a rider review hearing and relinquished jurisdiction. Mr. Murphy now appeals to this Court, contending that the district court abused its discretion when it relinquished jurisdiction.

Statement of the Facts and Course of Proceedings

The State charged Mr. Murphy with burglary and grand theft for unlawfully entering the USDA Rocky Mt. Research Station Moscow Forestry Service lab building

and taking certain items. (R., pp.18–20, 52–53.) Pursuant to an Idaho Criminal Rule 11 plea agreement, Mr. Murphy pled guilty to the burglary charge. (R., pp.69–73; Tr. Vol. I,¹ p.16, L.18–p.17, L.4) The State agreed to dismiss the grand theft charge, and the parties agreed to a sentence of two to five years with the district court retaining jurisdiction. (R., pp.69–71.) The district court accepted Mr. Murphy’s guilty plea. (Tr. Vol. I, p.17, Ls.5–15; R. pp.72–73.)

After a sentencing hearing held in August of 2012, district court sentenced Mr. Murphy to five years, with two years fixed, and retained jurisdiction (“a rider”). (Tr. Vol. II, p.17, Ls.1–3; R., pp.86–89.) The district court held a rider review hearing about eleven months after sentencing in July of 2013. (See *generally* Tr. Vol. II, pp.24–31.) The district court suspended execution of Mr. Murphy’s sentence and placed him on probation. (Tr. Vol. II, p.26, Ls.17–19; R., pp.98–104.) In September of 2013, a Report of Probation Violation was filed. (R., pp.107–08.) Mr. Murphy admitted to violating his probation, and the district court revoked probation, executed the underlying five-year sentence, and retained jurisdiction a second time. (R., pp.120–25; Tr. Vol. II, p.38, L.18–p.41, L.7.) Following a rider review hearing in early September of 2014, the district court suspended execution of Mr. Murphy’s sentence and placed him on probation. (R., pp.130–38; Tr. Vol. II, p.52, Ls.16–18.)

On September 30, 2014, another Report of Probation Violation was filed for a

¹ There are three transcripts on appeal. The first, cited as Volume I, contains the entry of plea hearing, held on July 5, 2012. The second, cited Volume II, contains the August 20, 2012, sentencing hearing; the July 29, 2013, rider review hearing; the January 27, 2014 status conference; the September 4, 2014, rider review hearing; and the June 11, 2015, review hearing. The third, cited as Volume III, contains a status conference, held on February 23, 2015.

failure to report for local jail time and the use of methamphetamine. (R., pp.144–45.) On February 23, 2015, Mr. Murphy admitted to the violations. (Tr. Vol. III, p.8, Ls.4–p.12, L.2; R., p.151.) The district court proceeded to disposition and revoked Mr. Murphy’s probation, executed the underlying sentence, and retained jurisdiction. (Tr. Vol. III, p.17, Ls.5–12; R., pp.151–55.)

On June 11, 2015, the district court held a rider review hearing. (R., pp.166–67; *see generally* Tr. Vol. II, pp.59–67.) The district court relinquished jurisdiction and imposed the underlying five-year sentence, with two years fixed. (R., pp.167–67; Tr. Vol. II, p.65, Ls.15–18.) On June 12, 2015, the district court entered a Judgment Relinquishing Jurisdiction and Imposing Sentence. (R., pp.168–70.) On July 9, 2015, Mr. Murphy filed a timely notice of appeal from the district court’s judgment relinquishing jurisdiction. (R., pp.178–80.)

ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction?

ARGUMENT

The District Court Abused Its Discretion When It Relinquished Jurisdiction

The district court’s decision whether to retain jurisdiction and place the defendant on probation or relinquish jurisdiction is reviewed for an abuse of discretion. *State v. Brunet*, 155 Idaho 724, 729 (2013); *see also* I.C. § 19-2601(4). “A court’s decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate.” *State v. Hansen*, 154 Idaho 882, 889 (Ct. App. 2013).

In this case, Mr. Murphy's counsel acknowledged that probation was not a good option for Mr. Murphy, stating, "I don't think he has the maturity or . . . the working utensils or tools to be out in the community and take care of himself." (Tr. Vol. II, p.62, Ls.11–13.) Mr. Murphy's counsel also acknowledged that another rider may not be appropriate. (Tr. Vol. II, p.62, L.21–p.63, L.6.) Mindful of these concessions, Mr. Murphy submits that the district court abused its discretion by relinquishing jurisdiction.

Twenty-one-year-old Mr. Murphy has struggled with alcohol and substance abuse since he was fifteen years old. (Presentence Investigation Report (PSI), pp.14–15.) He reported that he had "blacked out" from alcohol consumption between twenty-five and fifty times in his life. (PSI, p.15.) He recognized that drugs and alcohol were the primary cause of his criminal behavior and that he makes poor decisions when he consumes alcohol. (PSI, pp.4, 15–16.) After some difficulties on his third rider, Mr. Murphy seemed to appreciate the consequences of his actions. He explained:

I can't deny anything. But, I guess, I just want to say that I don't know. Whenever I look into the future now . . . I don't really feel any hope any more. . . . My life – my life, it feels like – I don't know. I feel like I'm going to be one of those people that are in and out of prison forever, and I really don't want to be that. . . . I think the reason why I did flop is because I was scared really. . . . I'm scared to be back out on the streets, because that's what it feels like, I'm going to be forever. . . . I never meant to throw my whole life away.

(Tr. Vol. II, p.63, L.17–p.64, L.4.) Mr. Murphy's comments show that he recognized the negative impact his poor decisions had on his life. His comments also indicate a willingness to change his behavior instead of "throwing his life away." Mindful of his counsel's concessions below, Mr. Murphy contends that the district court abused its discretion by relinquishing jurisdiction. Mr. Murphy's comments demonstrate that he could succeed on probation with strict supervision.

CONCLUSION

Mr. Murphy respectfully requests that this Court vacate the district court's order relinquishing jurisdiction and remand for a new rider review hearing.

DATED this 5th day of November, 2015.

_____/s/
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of November, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
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JCS/eas